

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 676 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOPALDAS V CHATURVEDI

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR AG VYAS for Petitioner

MR NN PANDYA for Respondent No. 1 and 2

MR SN MAZGONKAR for MR SN SHELAT for Respondent No 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The facts which are not in dispute, in brief, are as under:

The petitioner was appointed as chokidar on 8-11-1977 in the school run by the respondent. The

appointment was given on a consolidated salary of Rs.125/per month. Later on the salary was increased to Rs.150/- per month. The services of the petitioner were terminated vide order dated 29th October, 1980. This order of termination is challenged by the petitioner before this Court. The petitioner has further prayed for giving him the benefit of the pay-scale of regular Class IV employees. The reply of this Special Civil Application has been filed by respondent no.3 and it has been stated that the services of the petitioner have been terminated as 16 starters of the tube-lights fixed in the school premises were missing as a result of which the tube-lights could not be lighted. The petitioner was called upon by the respondent no.3 vide letter dated 10th October, 1980 to show cause why price of Rs.40/- of these starters which were missing should not be recovered from him, as he had failed in his duty of guarding the property of the school. It is not the case of the respondent no.3 that the petitioner was given any chargesheet and an inquiry has been held before his services were terminated. From the plain reading of the reply filed by the respondent no.3, it is clear that the services of the petitioner were terminated as 16 starters of the tube-lights were missing and the Head master of the school concerned, reported that the petitioner was behaving in an arbitrary manner with the teachers and the other staff. It is a case where the services of the petitioner were terminated on an alleged misconduct. The petitioner by the time his services were brought to an end on the aforesaid ground, completed about three years service. The contention of the learned counsel for the respondent no.3 that it was short tenure of appointment and as such no inquiry is required to be undertaken before termination of services of the petitioner is devoid of any substance. The appointment of the petitioner as chokidar was on consolidated salary. The termination of his services were made on the ground of misconduct committed by him. If it is so, then the petitioner should have been given an opportunity of giving out his explanation and an inquiry should have been held. It has not been done in the present case. Termination of the services of an employee, whatever may be the character of his employment, on misconduct is a penalty which could have been given only after holding an inquiry i.e after giving a chargesheet and an opportunity of being heard. In view of this fact the order of termination of services of the petitioner cannot be allowed to stand.

2. The matter is to be considered from another aspect. The notice, annexure 'C' of the respondent no.3

to the petitioner was to show cause why Rs.40/- should not be recovered from his salary for the loss of 16 starters of the tube-lights. The respondent no.3 was only interested in recovering this loss from the petitioner and not to consider it to be a misconduct. This notice cannot be said to be a notice calling upon the explanation of the petitioner why his services should not be terminated. It is a case where the respondent no.3 was interested to recover the loss suffered by the institution.

3. Yet another ground needs to be referred that the education institution run by the respondent no.3 where the petitioner was working as a chokidar is an industry and the petitioner was a workman within the meaning as given to them under the provisions of the Industrial Disputes Act, 1947. Even if it is taken to be a case of simplicitor termination of the services then the provisions of sec. 25(f) of Industrial Disputes Act, 1947 are to be complied with. It is not a case of the respondent no.3 that before the termination of the services of the petitioner, one month notice or salary is given in lieu thereof and the retrenchment compensation has been paid. Now the question arises for consideration is whether the petitioner should be granted backwages for all these years. The petitioner was in the employment of the respondent as chokidar for Rs.150/-p.m. Looking to the nature of the work which was to be done by the petitioner, it cannot be said that the petitioner could not have got the employment elsewhere of the worth earning of Rs.150/- p.m.. It is true that the respondent no.3 has not come up with a case in the reply of this Special Civil Application that after termination of the services, the petitioner was in gainful employment, but it is also not the case of the petitioner in this Special Civil Application that after termination of the services, he remained for all these years without any employment. In absence of the statement made by the petitioner, to that extent it is difficult to hold that the petitioner for all these time remained unemployed. The petitioner filed a rejoinder affidavit which was affirmed on 25th January, 1995. I have gone through the contents of the rejoinder affidavit and I do not find any averment therein also that the petitioner remained out of employment for all these years. The petitioner in para-13(a) though prayed for quashing of the order dated 29th October, 1980, but he has not prayed for giving him all other benefits including the backwages. Taking into consideration the totality of the facts of this case, I do not consider it to be a fit case where the petitioner should be given any backwages. The learned counsel for

the petitioner contended that the petitioner should have been given the pay in the regular pay scale of class IV cadre from the date of his initial appointment and his appointment should be considered permanent from the date of appointment. The petitioner has come out with a case that in other schools, the post of chokidar are permanent, and as such, he is entitled for this benefit. So far as these grievances of the petitioner are concerned, they cannot be said to be tenable at this stage and it will be open to the petitioner to make a representation to respondent no.3 for the salary in the regular pay-scale, and to treat his appointment as permanent appointment. If such a representation is made to the respondent, the respondent will decide the same in accordance with law.

4. In the result, this Special Civil Application is allowed in part. The order of the termination of services of the petitioner dated 29th October, 1980 is set aside, but the petitioner shall not be entitled for any backwages. The petitioner shall be deemed to be continued in service for all other purposes from the date of his initial employment. Rule is made absolute in the aforesaid terms with no order as to costs.
